

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **R.S.A. No.198 of 2011 & C.M. No.20938/2011 (for stay)**

Decided on : 13th March, 2013

MAYA DEVI & ANR. Appellants

Through: Mr. Ujjwal Kr. Jha, Advocate.

Versus

JAI SINGH TOMAR & ANR. Respondents

Through: None for R-1.
Mr. Kunal Sharma, Adv. for R-2/DDA.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellants under Section 100 CPC against the judgment dated 11.7.2011 passed by the learned Senior Civil Judge-cum-RC (East), Karkardooma Courts in R.C.A. No.1/2011 dismissing the appeal of the appellants and upholding the judgment dated 8.12.2010 passed by the learned Administrative Civil Judge dismissing the suit of the plaintiffs/appellants.

2. Briefly stated the facts of the case are that the appellants had filed a suit bearing No.281/2008 for declaration and permanent injunction against the respondent no.1/Jai Singh Kanwar s/o Late Sh. Om Singh

Kanwar and DDA. The case which was setup in the plaint was that one Chajju Singh s/o late Bohtu Singh, owned a land in different Khasras measuring 24 bighas and 16 biswas situated in Village Babarpur, Illaqa Shahdara, Delhi. The said land was notified under Section 4 of the Land Acquisition Act on 13.11.1959 and after completion of the processes of law, the land was acquired by the Government vide award No.25 of 1969. Though the entire land was awarded but possession in respect of only 7 bighas and 1 biswas was taken by the Government. The compensation was duly paid to Chajju Singh in respect of 7 bighas and 1 biswas. It was alleged that Chajju Singh died intestate on 26.2.1976 leaving behind five sons and legal heirs of his predeceased son Inder Singh, who is stated to have expired on 1.7.1958 leaving behind his widow/appellant No.1 (Maya Devi), five sons and one daughter/appellant no.2. It was alleged that after the death of Chajju Singh in the year 1976, four brothers and sons of the deceased brother Inder Singh executed a relinquishment deed on 8.5.1976 in favour of the fifth brother, Om Singh Kanwar, happened to be the father of the respondent no.1. On the basis of the said relinquishment deed, Om Singh Kanwar filed a writ petition in the High Court for allotment of an alternative plot. During the pendency of the

said writ petition, Om Singh Kanwar died and his son Jai Singh Kanwar was impleaded as a respondent, who is now contesting the claim of the appellants. It was alleged in the plaint that Om Singh Kanwar had procured the relinquishment deed in his favour fraudulently in connivance with his brothers and nephews by keeping the present appellants in dark. It was alleged that this writ petition was allowed by the Division Bench on 22nd April, 2008 directing the DDA to allot an alternative plot to the respondent no.1 and the appellants learnt about the same through newspaper in the last week of April, 2008. The case of the appellants is since Section 6 of the Hindu Succession Act, 1956 pertaining to coparcenary property has been amended with effect from 09.9.2005, therefore, suit property deserves to be partitioned so as to enable the appellants to get a share in the said property. It was prayed that a declaration be issued declaring the relinquishment deed purported to have been executed by the four brothers and nephews in favour of fifth brother, Om Singh (since deceased) as null and void and that the appellants are entitled to the allotment of alternative plot along with the respondent no.1 from the DDA.

3. The respondent No.1/Jai Singh Kanwar contested the claim of the appellants and raised various preliminary objections apart from contesting the matter on merits. It was the case of the respondent no.1 that the appellants have initiated the present proceedings only with a view to blackmail the respondent.

4. So far as the DDA is concerned, it has taken the plea that it has already filed a special leave petition in the Hon'ble Supreme Court against the order of the Division Bench dated 22.4.2008 directing allotment of an alternative plot to Jai Singh Kanwar in lieu of acquisition of the land. It is stated that this matter before the Supreme Court has not been decided as yet.

5. On the pleadings of the parties, following issues were framed :-

*"1) Whether the suit of plaintiff is within limitation?
OPP*

2) Whether the plaintiff has not locus standi to file the present suit? OPD

3) Whether this court has no jurisdiction to try the present suit? OPD

4) Whether the suit is barred under Section 34 and Section 41 (e) (h) of Specific Relief Act? OPD1

5) Whether the suit is bad for non-joinder and mis-joinder of parties? OPD1

- 6) *Whether the suit is not valued properly for the purpose of court fees and jurisdiction? OPD*
- 7) *Whether the plaintiff has not served any notice under Section 53 of the DD Act prior to filing of present suit and the suit is not maintainable on this ground?OPD2*
- 8) *Whether the plaintiff is entitled to a decree of declaration, as prayed for? OPP*
- 9) *Whether the plaintiff is entitled to a decree of permanent injunction, as prayed for? OPP*
- 10) *Relief.”*

6. So far as issue No.1 as to whether the relief of declaration as claimed by the appellant was barred by time or not is concerned, the learned trial court returned a finding that a suit for declaration should have been filed within a period of three years from the date of execution of the relinquishment deed in the year 1976. It was further observed that since the suit for cancellation of the deed has been filed only in the year 2008, therefore, the said suit is barred by limitation.

7. Feeling aggrieved, the appellants preferred an appeal bearing R.C.A. No.1/11 before the court of the learned Senior Civil Judge-cum-

RC (East). The said appeal was also dismissed vide order dated 11.7.2011 upholding the finding of fact passed by the learned trial court.

8. Still feeling dissatisfied, the appellants have filed the present regular second appeal.

9. I have heard the learned counsel for the appellants. It has been contended by the learned counsel that the courts below have erroneously passed the judgment dismissing the suit of the plaintiffs/appellants on the ground of limitation because the period of limitation is not to be reckoned from the year 1976, when the deed of relinquishment is purported to have been executed, but from the date on which the cause of action has accrued. It was contended that the cause of action has accrued in favour of the appellants only when they learnt about the judgment having been passed by the Division Bench of the Delhi High Court directing the DDA to allot an alternative plot to the respondent no.1 and since they learnt about the same in the year 2008, period of limitation should be reckoned from 2008.

10. I have carefully considered the submissions made by the learned counsel for the appellants and have also gone through the record. I feel that no substantial question of law is arising from the appeal. This is on

account of the fact that admittedly there is a concurrent finding of fact staring at the face of the appellants that a suit for declaration is to be filed within a period of three years from the date of accrual of the cause of action. Admittedly, in the instant case, the relinquishment deed is purported to have been executed by the four brothers and nephews on 8.5.1976. Subsequent thereto, the same was registered with the Sub-Registrar. The learned trial court has rightly placed reliance on two judgments titled *Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana & Anr.*; 2011 (12) JT 564 and *Dilboo (Smt.) (Dead) by LRs and Ors. vs. Dhanrajji (Smt.) (Dead) & Ors.*; (2000) 7 SCC 702 to draw an inference that once a document is registered with the Sub-Registrar then the public at large is deemed to have the knowledge. In the instant case, the relinquishment deed having been registered in the year 1976, the factum of execution of the relinquishment deed is deemed to be within the knowledge of the appellants. Therefore, it cannot be said that there was anything illegal or improper on the part of the trial court in holding that the suit of the plaintiffs/appellants is barred by limitation.

11. The second submission of the learned counsel is since the amendment to Section 6 of the Hindu Succession Act dealing with

coparcenary property was brought into operation w.e.f. 9.9.2005, therefore, the period of limitation is to be reckoned from that date.

12. I do not agree with this contention of the learned counsel that the period of limitation is to be reckoned either from the year when the appellants learnt about the factum of judgment having been passed by the Division Bench directing allotment of an alternative plot to Jai Singh Kanwar. I also do not agree with the submission of the learned counsel that alternatively the period of limitation is to be reckoned from the date when the amendment to the Act has been brought into operation, that is, with effect from 9.9.2005. This is on account of the fact that sub-clause (3) of Section 6 clearly lays down that the provisions of the Section will be applicable only where a coparcener dies after the date on which the amendment to Section 6 has been brought into operation meaning thereby that only if a person has died after 9.9.2005, his property will devolve not by survivorship but by inheritance. Since in the instant case, Chajju Singh has admittedly died before the amendment to Section 6 of the Hindu Succession Act was brought into operation therefore, the benefit of Section 6, as amended, would not be available to the appellants to seek a right in the coparcenary property. If this is permitted to be done then,

practically all the cases where the death of a coparcener had taken place before amendment of Section 6 of the Hindu Succession Act, will be open to challenge. Such an intention of the Legislature was not decipherable from the amendment to the Section in question.

13. For the reasons mentioned above, I am of the opinion that there is no infirmity or illegality in the finding arrived at by the trial court and upheld by the appellate court that the suit for declaration filed by the appellants in the year 2008 challenging the relinquishment deed purported to have been executed in the year 1976 is hopelessly barred by time as the said suit challenging the relinquishment deed or seeking a declaration had to be filed within a period of three years from the date of execution of the relinquishment deed.

14. For the reasons mentioned above, I feel that no substantial question of law is arising from the appeal. Accordingly, the appeal itself is dismissed.

V.K. SHALI, J.

MARCH 13, 2013
‘AA’